

#### STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of M.P., Police Officer (S9999M), Borough of Roselle

:

:

CSC Docket No. 2013-1212

Medical Review Panel Appeal

ISSUED: AUG 1 4 2014 (BS)

M.P. represented by Darryl M. Sanders, Esq., appeals his rejection as a Police Officer candidate by the Borough of Roselle and its request to remove his name from the eligible list for Police Officer (S9999M) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel on May 22, 2014, which rendered its report and recommendation on May 27, 2014. Exceptions were filed on behalf of the appellant.

The report by the Medical Review Panel discusses all submitted evaluations. It notes that Dr. Irving B. Guller (evaluator on behalf of the appointing authority), conducted a psychological evaluation of the appellant and characterized the appellant as producing test scores indicative of "the bottom end of the low average range and significantly below the level normally required for a public safety officer" and significantly below the necessary level for a person who would carry a weapon. Dr. Guller concluded that, although the appellant was a good-natured, pleasant individual, who was obviously very interested in working as a Police Officer, he is limited intellectually and cognitively. Dr. Guller opined that, while there is no overt pathology, the deficits which the appellant shows and which were confirmed twice by testing for ability, would appear to preclude him from being a Police Officer and he would potentially represent a danger in a crisis situation where he would have possession of a weapon. Dr. Guller failed to recommend the appellant for appointment to the subject position.

Dr. Anne R. Farrar-Anton, evaluator on behalf of the appellant, carried out a psychological evaluation and characterized the appellant as a friendly and engaging young man who is pursuing his ambition to be a Police Officer. Dr. Farrar-Anton noted, and her own testing revealed, that the appellant exhibited some weaknesses in his neurological functioning which Dr. Farrar-Anton opined were likely the direct result of his chemotherapy, bone marrow transplant, and radiation treatment for his childhood diagnosis of Acute Lymphocytic Leukemia. However, Dr. Farrar-Anton found that the appellant's overall performance was similar to that of his same-age peers with regard to his intellectual reasoning skills and that this should not preclude him from serving as a Police Officer.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. The Panel concluded that the negative recommendation found support in the appellant's potential cognitive limitations. The appellant answered all of the Panel's questions regarding the aforementioned issue during his appearance. The Panel was concerned about the appellant's ability to discern some of the critical aspects of challenges that may arise when one has to contend with a wide variety of individuals and circumstances while working as a Police Officer. This was evidenced by his difficulty with expressing how he might interact differently with individuals based on their presentation or behavior. The appellant also offered some responses which were not seen as completely addressing the concerns or issues raised. The Panel collectively found that there was sufficient evidence to support the findings from the evaluation conducted on behalf of the appointing authority. The Panel found that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicate that the candidate is mentally unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld. The Panel recommended that the appellant be removed from the eligible list.

In his exceptions, the appellant asserts that he is a graduate of Seton Hall Preparatory School and that he has taken and passed the law enforcement examination twice before. The first time he scored a 91 and the last time a 92. Additionally, the appellant asserts that he has been employed as a Security Guard for over eight years at the Ronald Reagan Academy in Elizabeth where he "performs some of the functions of a Police Officer already and his performance has been exemplary." The appellant states that his medical history is well-documented by all the parties in this matter and that he has been participating in a program called "Cure and Beyond," which is a program for people like the appellant who survived a life-threatening disease. The appellant disputes the findings of the Panel and the appointing authority that possessing an IQ of 86 makes it "too dangerous for a person to possess a firearm as a Police Officer" and he cites a county in South Carolina that actually significantly lowered its maximum IQ cut-off

because new hires with IQs of 60 "were less likely to second guess orders, less susceptible to corruption, and less likely to hurt innocent people. The theory is the less likely new hires are to question superior officers, the safer the community will be." Finally, the appellant argues that he is a good learner and that a person's IQ is not fixed and that it can be improved over time. At the academy, the appellant will be trained in how to handle the different situations the Panel expressed concern about, and that would be the proper venue to raise these issues. For all of these reasons, the appellant requests that the Civil Service Commission not adopt the Panel's report and recommendation and restore him to the subject eligible list. In support of his appeal, the appellant submitted two performance evaluations from his position as a Security Guard and a letter of recommendation from the School Principal.

#### CONCLUSION

The Class Specification for Police Officer is the official job description for such municipal positions within the merit system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives, the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

The Civil Service Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and found that the psychological traits which were identified and supported by test procedures and the behavioral record relate adversely to the appellant's ability to effectively perform the duties of the title. The Commission finds that the appellant's exceptions do not persuasively dispute the findings and recommendations of the Panel in this regard. The Panel and the appointing authority were actually concerned with the appellant's overall intellectual and cognitive functioning as revealed in the testing, not merely his IQ

score which was in the low average range and not low enough to disqualify him. The Panel's concerns centered on the appellant's apparent inability to discern the critical aspects of diverse situations with which he would have to contend as a Police Officer. This was evidenced in the difficulty he had in expressing his responses and some responses he offered to the Panel were not seen as adequately addressing the concerns or issues raised. The Commission notes that the Panel conducts an independent review of all of the raw data presented by the parties as well as the raw data and recommendations and conclusions drawn by the various evaluators prior to rendering its own conclusions and recommendations, which are based firmly on the totality of the record presented to it. The Panel's observations regarding the appellant's appearance before the Panel are based on its expertise in the fields of psychology and psychiatry, as well as its experience in evaluating hundreds of appellants. Having considered the record and the Medical Review Panel's report and recommendation issued thereon and the exceptions filed on behalf of the appellant, and having made an independent evaluation of same, the Civil Service Commission accepted and adopted the findings and conclusions as contained in the attached Medical Review Panel's report and recommendation.

#### **ORDER**

The Civil Service Commission finds that the appointing authority has met its burden of proof that M.P. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be removed from the subject eligible list.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE 13TH DAY OF AUGUST, 2014

Robert M. Czech

Chairperson

Civil Service Commission

Inquiries and

Correspondence:

Henry Maurer

Director

Division of Appeals and Regulatory Affairs Civil Service Commission Written Record Appeals Unit

PO Box 312

Trenton, New Jersey 08625-0312

#### Attachments

c: M.P.

Darryl M. Saunders, Esq. David G. Brown, II Kenneth Connolly TO:

State of New Jersey, Department of Personnel Merit System Practices & Labor Relations

FROM:

Medical Review Panel

(Evan Feibush, M.D. & Joel Friedman, Ph.D.

RE:

DATE:

May 22, 2014

#### DISCUSSION:

is a 28 year-old applicant to the Borough of Roselle Police Department for the position of Police Officer Recruit, whose name was removed from the eligibility list of the hiring authority for the reason of not being considered psychologically suited to the position. The Medical Review Panel, at its meeting on May 22, 2014, discussed Mr. sappeal of this action by the hiring authority. The applicant was seen by Irving B. Guller, Ph.D. (report dated July 16, 2012) on behalf of the hiring authority and by Anne R. Farrar-Anton, Ph.D. (report dated July 16, 2013) on behalf of the applicant. Mr. was present at the meeting with his attorney, Darryl Saunders, present on his behalf. Dr. Lewis Schlosser, psychologist for The Institute for Forensic Psychology, was present on behalf of the hiring authority.

#### FINDINGS:

Dr. Guller conducted a psychological evaluation of the applicant that included the following:

- The Shipley Institute of Living Scale
- The Revised Beta Examination III
- The Candidate and Officers Personnel Survey ("COPS" Test)
- The Edwards Personal Preference Schedule
- The Social Opinion Inventory (Locus of Control)
- The How Supervise Test
- The Personality Assessment Inventory (PAI)
- The Speed Completion Form Sentence Completion Test
- Biographical Summary Forms
- An In-Depth Personal Interview

#### Dr. Guller characterized the candidate as follows:

- Earning a score on the Shipley indicative of "the bottom end of the low average range and significantly below the level normally required for a public safety officer".
- Earning a score on the Revised Beta Examination III that placed him in the "8<sup>th</sup> percentile of the population and significantly below the necessary level for a person who would carry a weapon".
- Producing test results that did not indicate any evidence of psychopathology.
- Working full-time as a security guard with the Elizabeth Board of Education for the last seven years.
- Having no history of being fired from a job.
- Having no history of arrests.

- Denying any history of learning disabilities, but admitting to failing a math class and having to attend summer school as a result of failing that class.
- Not having ever attended college.
- Denying any history of substance abuse problems.
- Dr. Guller concluded that: "Mr. and is a good natured, pleasant individual, who is obviously very anxious to be a police officer, but he is limited intellectually and cognitively. While there is no overt pathology, the deficits which he shows and which were confirmed twice by testing for ability, would appear to preclude him from being a police officer and he would potentially represent a danger in a crisis situation where he would have possession of a weapon. On the basis of these facts, he cannot be recommended for appointment as a police officer".

Dr. Farrar-Anton conducted a psychiatric evaluation of the applicant that included the following:

- Review of Records
- Behavior Assessment System for Children Second Edition (BASC-2)
- California Verbal Learning Testing Second Edition (CVLT-II)
- Conner's Continuous Performance Test II (CPT II V.5)
- Expressive Vocabulary Test Second Edition (EVT-2, Form A)
- Peabody Picture Vocabulary Test Fourth Edition (PPVT-4, Form A)
- Wechsler Adult Intelligence Scale Fourth Edition (WAIS-IV)
- Wisconsin Card Sorting Test (WCST: Computer Version 4, Research Edition)
- Woodcock-Johnson III Tests of Achievement (WJ-III, Normative Update, Form A)
- Clinical Interview

#### Dr. Farrar-Anton characterized the candidate as:

- Having a history of being diagnosed with Acute Lymphocytic Leukemia in August of 1989 at the age of 4.
- Experiencing a relapse of his disease in August of 1993 at the age of 8.
- Another relapse occurred when he was 10 years old.
- Receiving both chemotherapy and radiation treatment.
- Being in "complete remission" since February of 1997 following a bone marrow transplant.
- Obtaining an IQ Score of 86 on the WAIS-IV, which indicated that his overall intellectual skills are below that of his peers.
- Performing equally to his peers in terms of general cognitive ability skills.
- Achieving a score on the VCI in verbal reasoning abilities that were equal to that of his peers, but on the low end of the Average Range.
- Achieving a score on the PRI that indicates that his nonverbal reasoning skills are equal to that of his peers, but were in the low end of the Average Range.
- Performing on the Working Memory Index at a level that indicated that his ability to sustain attention, concentrate and exert mental control is below the level of his peers.
- Performing on the Processing Speed Index at a level that indicated that his ability to process simple or routine visual material without making errors that is slightly below that of his peers.

- Performing on the CPT at a level that indicated no concerns regarding his ability to pay attention.
- Dr. Farrar-Anton concluded that "impressed me as friendly and engaging young man who is seeking to follow his dreams of being a police officer. While he exhibits some weaknesses in his neuropsychological functioning which are likely the direct result of his chemotherapy, bone marrow transplant, and radiation treatment for his childhood diagnosis of Acute Lymphocytic Leukemia, his is overall performing similar to that of his same-age peers with regard to his intellectual reasoning skills."

#### **CONCLUSIONS:**

The evaluators on behalf of the applicant and the hiring authorities reached differing conclusions and recommendations. The negative recommendations that were indicated related to Mr. potential cognitive limitations.

Mr. Answered all of the Panel's questions throughout the MRP meeting regarding the aforementioned issues. He appeared to be forthright in his responses. The Panel had concerns about his ability to discern some of the critical aspects of challenges that may arise when one has to contend with a wide variety of individuals and circumstances while working as a police officer. This was evidenced by his difficulty with expressing how he might interact differently with individuals based on their presentation or behavior. He also offered some responses which were not seen as completely addressing the concerns or issues raised. The Panel found that there was sufficient evidence to support the findings from the evaluation conducted on behalf of the hiring authority.

Therefore, taking into consideration Dr. Guller's psychological evaluation, Dr. Farrar-Anton's neuropsychological evaluation, Manual presentation, the test results and procedures and the behavioral record, when viewed in light of the job specifications for a Borough of Roselle Police Department Police Officer Recruit, it is indicated that the applicant is mentally unfit to perform effectively the duties of the position sought, and therefore, the action of the hiring authority should be upheld.

#### RECOMMENDATION:

It is the recommendation of the Panel that the candidate, Mr. and, be removed from the candidate eligibility list.

Joel Friedman, Ph.D.

#### Law Office

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ADMITTED IN THIRD CIRCUIT AND U.S. SUPREME COURT

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June 23, 2014

Elaine M. Dundala
Liaison to the Medical Review Panel
Civil Service Commission
Division of Appeals and Regulatory Affairs
P.O. Box 312
Trenton, New Jersey 08625-0312

RE: Borough of Roselle, Police Officer
CSC Docket No. 2013-1212

Dear Ms. Dundala,

Response is made to the Report and Recommendation of the Medical Review Panel (hereinafter "MRP") consisting of Evan Feibush and Joel Friedman. Please consider this as my initial filing of exceptions in the above-captioned matter. On or about June 6, 2014, I received a supplemental report from the Institute of Forensic Psychology (hereinafter "IFP") dated May 5, 2014. This supplemental report was supplied to the MRP, without notice to the appellant. In light of the MRP's decision, I am sending a copy to Dr. Farrar-Anton for her review and comment.

The issue generally speaking is whether Mr. has the cognitive skills to work as a competent Police Officer in the Borough of Roselle. Mr. is a graduate of the Seton Hall Preparatory School. As Mr. indicated to the MRP, he took the civil service examination twice scoring a 91 the first time and recently a 92. I suggest this shows a clear ability to read and comprehend. More importantly, I contend it shows Mr. has the ability to learn.

One of the special skills for being a Police Officer in Roselle is the ability to speak, read and write in English and Spanish, a skill Mr. possesses. Mr. also understands Portuguese. Mr. has worked as a security guard for over 8 years for the Ronald Reagan Academy in Elizabeth, New Jersey. He performs some of the functions of a police officer already and his performance has been exemplary. See Exhibit "A".

#### Borough of Roselle, Police Officer

June 19, 2014

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In the IFP letter dated May 5, 2014 and sent to the board without notice to the Appellant, It indicates Mr. Justed a "hired gun" to advocate on his behalf, although Dr. Farrar-Anton is a professional and used objective testing criteria to arrive at her expert opinion. IFP points to evidence at all that Dr. Farrar-Anton failed to perform her duties in a professional manner at all times. Mr. Justes medical history is well documented by all the parties in this matter. Given Mr. Justes medical history, he was been participating in a program called Cure and Beyond. This program is for people like Mr. Justes who have experienced a severe, life threatening disease, so they can monitor his health condition on a yearly basis. Please be advised Dr. Farrar-Anton was recommended to Mr. Justes by Staff at Cure and Beyond, not me.

This brings me to the issue of his IQ being reported at 86 or the low average end of the intelligence for people. In fact, the MRP and IFP indicate an IQ of 86 is too dangerous for a person to possess a firearm as a police officer. Recently, Law enforcement officials in McCormick County, South Carolina have drastically lowered the maximum IQ cap-off for all newly hired police officers from an average of 90 to 60. City Officials felt that was an effective way to combat the violence in its community. Sheriff Bobo Greenre told the media that officers functioning within this IQange were less likely to second guess orders, less susceptible to corruption and less likely to hurt innocent people. The theory is the less likely new hires are to question experienced Superior Officers, the safer the community will be.

I suggest Mr. Sa a good learner, who did not take any remedial classes in High School, for 2 reasons. First, he didn't need them and second, they weren't offered. As a new hire Mr. Will get lots of supervision after completing the police academy. This is exactly the type of help Mr. Remeds, which makes him an excellent candidate to be a police officer for the Borough of Roselle. The MRP had issues with the way Mr. Remedial questions. I contend these questions were better suited to a candidate that already passed the police academy. The Panel had concerns about Mr. Remedial different situations, however, these different situations are precisely why the State of New Jersey and more specifically, the Police Training Commission require Police Officers to take a certified course in a state approved police academy. I contend those questions really fall within the purview of the Police Department and not the MRP.

The last issue I am prepared to address today is Mr. So IQ score of 86 and his issues with math. Although I am not a medical expert, I am aware that IQ scores can be improved and it would certainly be quite easy for Mr. To increase his score from 10 to 15 points. A person's IQ is not fixed. It can be raised by a number of methods, one of which is through education. For example, mathematical questions are on virtually all IQ tests. If you are a poor student of math and take an IQ test, you will score low in the mathematical portion of the test and that will reduce your over-all score on your intelligence test. However, if you get a math tutor and learn math (which can be done) and re-take the very same IQ test, you will score higher on

Borough of Roselle, Police Officer

June 19, 2014

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the test because you improved your math skills. IQ scores can be raised as high as 15 IQ points and in some cases, even higher! As we all know, math is a common component to basic IQ tests. If Mr. takes a math class to refresh his math skills he could easily go from an IQ score of 86 to 101, which puts him right in the middle of Police Recruits in the State of New Jersey. I have reviewed the requirements for Police Officer in the Borough of Roselle and math was not a required skill. If there is a IQ range, utilized by the State of New Jersey or the Borough of Roselle, I would like for that information to be conveyed to the appellant and I.

Respectfully submitted,

Diffryl M. Saunders, Esq.

DS/1c

cc:

David G. Brown, II Borough of Roselle

# Exhibit A

### ELIZABETH PUBLIC SCHOOLS

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# ELIZABETH PUBLIC SCHOOLS THINK-LEARN-ACHIEVE-CARE

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